

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

UNITED STATES OF AMERICA	§	
	§	
VS.	§	CRIMINAL NO. G-99-10 (13)
	§	CIVIL ACTION NO. G-03-078
DEMETRIOUS SANDFORD	§	


ORDER OF DISMISSAL

On January 25, 2006, the United States Magistrate Judge issued his Report and Recommendation which recommended that the “ Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence By a Person in Federal Custody" filed by Demetrious Sandford be summarily dismissed. The Magistrate Judge gave Sandford until March 3, 2006, to file any objections to the Report and Recommendation. In lieu of objections, Sandford filed, on March 2, 2006, a “ Motion to Withdraw 28 U.S.C. § 2255.”

Rule 12 of the Rules Governing Section 2255 Proceedings for the United States District Courts provides that the Federal Rules of Civil Procedure apply to § 2255 Motions unless preempted by those rules or a federal statute. Consequently, Rule 41(a) of the Federal Rules of Civil Procedure, which permits a Plaintiff to voluntarily dismiss a civil action under the present circumstances, is applicable.

It is, therefore, **ORDERED** that Sandford’ s “ Motion to Withdraw 28 U.S.C. § 2255” (Instrument no. 717) is **GRANTED** and his “ Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence By a Person in Federal Custody" (Instrument no. 510) is **DISMISSED without prejudice.**

DONE at Galveston, Texas, this 6th day of March, 2006.



Samuel B. Kent
United States District Judge